National Clearinghouse on
Abuse in Later Life
www.ncall.us | ncall@ncall.us

Powers of Attorney: FAQ for Advocates Working with Older Survivors of Abuse

Key Learning Points

- There are two main types of Power of Attorney (POA): Power of Attorney for Finances (POAF) and Power of Attorney for Health Care (POAHC), which grant authority over financial matters and medical decisions respectively.
- POAs can serve protective purposes for older adults, allowing them to designate trusted individuals to manage their affairs, but can also be misused by abusers if they are appointed as agents.
- The existence of a POA does not prevent advocates from providing services to older survivors of abuse.
- Both POAF and POAHC can typically be revoked by the principal in writing at any time if they have the capacity to do so. If the principal has been declared incapacitated, a court may revoke or limit the agent's authority.

Q1: What are Power of Attorney documents?

A1: Powers of Attorney (POA) are legal documents that allow individuals (referred to as principals) to appoint someone else (an agent) to make decisions on their behalf, either immediately or at a designated future time.

There are two main types: **Power of Attorney for Finances (POAF)**, which grants authority over financial matters, and **Power of Attorney for Health Care (POAHC)**, which grants authority over medical decisions.

Powers of Attorney are governed by state law, and requirements vary by jurisdiction.

Please note: A Power of Attorney for Health Care is different than a Living Will. A Living Will is a document used to communicate your wishes for you if you are incapacitated. A Power of Attorney appoints another person to communicate your wishes for you.

Q2: What purpose does a Power of Attorney serve?

A2: Powers of Attorney for Finances and Powers of Attorney for Health Care convey different authority.

A Power of Attorney for Finances serves the following purposes:

- **Designate a financial agent:** Allows an individual (the principal) to appoint someone they trust (the agent) to manage their financial affairs.
- **Ensure continuity of financial management:** Enables financial decisions and transactions to be made even if the principal becomes incapacitated or unable to manage their own affairs.
- **Can grant the agent authority to engage in specific financial transactions:**
    - Pay bills and taxes
    - Manage bank accounts and investments
    - Buy, sell, or manage real estate
    - Collect government benefits
    - Handle insurance claims

- **Avoid guardianship:** May prevent the need for court-appointed guardianship of the estate if the principal becomes incapacitated.
- **Customization:** Can be tailored to grant broad or limited powers, and can be set to take effect immediately or only upon incapacitation (springing POA).

A Power of Attorney for Health Care serves these purposes:

- **Designate a healthcare agent:** Allows an individual to appoint a trusted person to make medical decisions on their behalf if they become unable to do so.
- **Ensure medical wishes are respected:** Provides a mechanism for the principal's healthcare preferences to be carried out when they cannot communicate them directly.
- **Specific healthcare authorizations:** Can grant the agent authority to:
  - Consent to or refuse medical treatments
  - Choose healthcare providers and facilities
  - Access medical records
  - Make end-of-life decisions
- **Complement advance directives:** Works in conjunction with living wills or other advance directives to provide comprehensive guidance on medical care.
- **Avoid conflicts:** Helps prevent disagreements among family members about medical decisions by clearly designating a decision-maker.
- **Flexibility in decision-making:** Allows for real-time decisions based on current medical information, which static documents like living wills may not address.

Both types of POA documents serve to protect an individual's interests, ensure their wishes are carried out, and provide a clear legal framework for decision-making when the individual is unable to act for themselves. They are important tools for planning for potential incapacity and maintaining control over one's affairs, which can make them especially valuable to people who are regaining power and control in their lives.

Q3: What are examples of situations in which a person might have a Power of Attorney?

A3: Some examples of situations where a person might have a POAF include:

- **Cognitive decline:** An older adult in the early stages of dementia sets up a financial POA to ensure their finances are managed as their condition progresses.
- **Physical limitations:** An older person with severe arthritis appoints a financial agent to handle tasks like writing checks or visiting the bank.
- **Extended travel or relocation:** A retiree planning to spend several months abroad designates someone to manage their finances back home.
- **Complex financial matters:** An older adult with significant investments or business interests appoints a financially savvy relative or professional to manage these affairs.
- **Hospitalization or rehabilitation:** Following a stroke, an older adult uses their financial POA to ensure bills are paid during their recovery period.
- **Gradual transition of financial management:** An aging parent slowly transitions financial responsibilities to an adult child using a POA, while still maintaining oversight.

Some examples of situations where a person might have a POAHC include:

- **Chronic health conditions:** An older adult with a progressive illness like Parkinson's designates a healthcare agent to make decisions as the disease advances.
- **High-risk surgery:** Before undergoing major surgery, an older person appoints a healthcare POA in case of complications.
- **Memory issues:** Someone experiencing early signs of memory loss designates a healthcare agent to assist with medical decisions and appointment management.
- **End-of-life planning:** An older adult names a healthcare agent to ensure their wishes regarding life-sustaining treatments are respected.

- **Language or cultural barriers:** An older immigrant designates a bilingual family member as their healthcare agent to navigate the medical system.
- **Living alone:** An older adult living independently appoints a trusted friend as their healthcare agent in case of sudden illness or injury.
- **Complex medical needs:** Someone with multiple health conditions names a healthcare agent to coordinate care among various specialists.

In many cases, older adults might set up both financial and healthcare POAs as part of comprehensive estate and care planning. These documents provide peace of mind and ensure that trusted individuals can step in to manage affairs if needed, while allowing the older adult to maintain independence as long as possible.

Q4: How can having a Power of Attorney impact older survivors of abuse?

A4: A valid Power of Attorney document can grant an agent a great deal of power, as the agent is able to make important financial or health-related decisions on the principal's behalf. Having a Power of Attorney can significantly impact older survivors of abuse in both positive and negative ways. Executing a Power of Attorney document can be a protective measure if the agent is trustworthy, or it can potentially be used to facilitate or exacerbate abuse if the agent is the abuser.

Q5: How does a Power of Attorney impact the services I provide as an advocate?

A5: It does not. The existence of a Power of Attorney should never prevent you from advocating for the older survivor just as you would for any other survivor. In fact, it might make your advocacy even more necessary. For example:

- **Confidentiality:** Uphold the survivor's privacy and confidentiality rights, even if they have designated someone else to make decisions on their behalf. The existence of a Power of Attorney document does not change advocates' confidentiality requirements. Advocates are not required to share information with an agent. As in any other situation, sharing with an agent under a POA is only permitted with a valid release of information authorization.

- **Informed consent:** Ensure that the survivor understands the implications of activating a Power of Attorney and that their consent is fully informed.

Q6: As an advocate, how do I know if a survivor's Power of Attorney is valid and active?

A6: There is typically no requirement that a Power of Attorney be registered in any way, so you may not know if a client has one unless they – or their agent or another person– tells you. And in most cases, it will not impact your work with them, unless the agent is using their authority in a way that is not in the client's best interest (see Q7.)

If it is necessary to determine the authenticity of a Power of Attorney document, familiarize yourself with how they are executed and activated in your state. Requirements vary significantly by jurisdiction, but generally:

- **Financial POAs** may or may not require witnessing or notarization, depending on state law. Some are effective immediately upon signing, while others are "springing," meaning they only go into effect upon the principal's incapacitation or another specified event.
- **Healthcare POAs** typically require witnessing by disinterested parties (those not related to the principal, not financially responsible for the principal's health care, not heirs, and not healthcare providers, with some exceptions). These are usually activated when the principal becomes incapacitated, as determined by medical professionals according to state requirements.

In all cases, the principal must have been of sound mind when the POA was executed.

Q7: What if the agent is also the older person's abuser?

A7: Advocates can play an important role in supporting an older adult who is being abused by an agent under the authority of a Power of Attorney.

- **Assess the survivor's safety:** Determine if the survivor is in immediate danger and take necessary steps to ensure their safety. If the survivor is not in immediate danger, develop a safety plan if they do not already have one. The safety plan may include revoking the Power of Attorney if the agent is harming the principal.
- **Mandated reporting:** If you know or have reason to believe that the older adult is being abused, determine whether you are a mandated reporter in your state before determining your next steps.
- **Financial exploitation:** If you suspect that the survivor is being financially exploited by an agent under a valid POAF, encourage the survivor to review their accounts for unauthorized transactions and/or misuse of funds, or connect them with legal or financial resources to Help. Contact law enforcement or Adult Protective Services if the client is willing. You should also refer them to an attorney for help revoking the POAF (see Q8).
- **Healthcare abuse:** If you suspect that the survivor is being abused by an agent under a valid POAHC, discuss whether the survivor's health care needs and preferences are being respected and not overridden. Identify any treatment or health related issues that need addressing immediately.

Q8: How can someone revoke a Power of Attorney?

A8: In most states, both healthcare and financial POAs can be revoked by the principal, in writing, at any time, if the principal has the capacity to do so. If the principal has been declared incapacitated, a court may revoke or limit the authority of the agent under the terms of the POA. Requirements for revocation vary by state, so encourage the survivor to seek legal advice about revoking the POA and executing a new one, if they wish.

Because revocation of a POA may give rise to concerns about retaliation, advocates should work with the survivor to safety plan accordingly and help the survivor identify who might be an appropriate, safe, trustworthy agent. Include strategies around any potential safety issues that might arise when the abuser learns their authority has been revoked.

Note: Specific procedures for revocation vary by state. Consult with local legal resources for state-specific requirements.

Q9: Where can advocates find more information about Powers of Attorney?

A9: There are a number of resources available to help survivors navigate issues related to Powers of Attorney:

- Your state's legal aid organizations
- Local elder law attorneys
- State bar associations' lawyer referral services
- Adult Protective Services (where appropriate)
- National Association of Elder Law Attorneys (for attorney referrals) • Local aging and disability resource centers
- State departments on aging
- Area Agencies on Aging

Advocates should research resources specific to their state and local area, as Power of Attorney laws and requirements vary significantly by jurisdiction.

Important Note: Power of Attorney laws vary significantly from state to state, including requirements for execution, witnessing, notarization, activation, and revocation. This resource provides general guidance, but advocates should always consult with legal professionals familiar with their jurisdiction's specific laws when working with cases involving Powers of Attorney.